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No. 83-529

In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM HARRIS SHARPE AND DONALD DAVIS SAVAGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED ON SEPTEMBER 27, 1983
CERTIORARI GRANTED ON JUNE 18, 1984

BEST AVAILABLE COPY

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

United States* v. *William Harris Sharpe

Cr. No. 78-138

Date	Filings—Proceedings
7/11/78	Indictment filed
7/21/78	Arraignment; defendant pleads not guilty
8/7/78	Motion of defendant to suppress evidence and memorandum in support filed
7/31/79	Non-jury trial and hearing on motions to suppress
8/1/79	Continuation of motion to suppress—motions denied, and non-jury trial
8/1/79	Oral order finding defendant guilty as charged
10/24/79	Sentence hearing Judgment and commitment order: Defendant committed to custody of Attorney General for period of five years to be followed by special parole term of 10 years.

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

United States* v. *Donald Davis Savage

Cr. No. 78-138

Date	Filings—Proceedings
7/11/78	Indictment filed
7/21/78	Arraignment; defendant pleads not guilty
8/7/78	Motion of defendant to suppress evidence and memorandum in support filed
7/31/79	Information pursuant to 21 U.S.C. 851 filed
7/31/79	Non-jury trial and hearing on motions to suppress
8/1/79	Continuation of motion to suppress—motions denied, and non-jury trial
10/24/79	Sentence hearing Judgment and commitment order: Defendant committed to custody of Attorney General for period of 8 years to be followed by special parole of 10 years.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CRIMINAL NO. 78-138
21 USC 841(a)(1) & 18 USC 2

UNITED STATES OF AMERICA

v.

WILLIAM HARRIS SHARPE AND DONALD DAVIS SAVAGE

INDICTMENT

THE GRAND JURY CHARGES:

That on or about the 9th day of June, 1978, in the District of South Carolina, WILLIAM HARRIS SHARPE and DONALD DAVIS SAVAGE unlawfully, knowingly and willfully did possess with intent to distribute approximately 2,600 pounds of marihuana, a Schedule I Controlled Substance as set forth in Title 21, United States Code, Section 812; in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

A True Bill

/s/ M. T. Abbott
M. T. ABBOTT
Foreman

/s/ Thomas E. Lydon, Jr.
United States Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Criminal No. 78-138

UNITED STATES OF AMERICA

v.

DONALD DAVIS SAVAGE

INFORMATION PURSUANT TO 21 USC § 851

I, Thomas E. Lydon, Jr., United States Attorney for the District of South Carolina, do accuse the defendant above named, who was charged on the 11th day of July, 1978, in the District of South Carolina with possession with intent to distribute marihuana, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2, of having been convicted previously as herein below described:

The said defendant, on or about the 26th day of June, 1974, in the Northern District of Florida, Gainesville Division, was duly convicted of one count of conspiracy to possess with intent to distribute marihuna, in violation of Title 21, United States Code, Section 846.

/S/ Thomas E. Lydon, Jr.
THOMAS E. LYDON, JR.
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CRIMINAL NO. 78-138

UNITED STATES OF AMERICA

v.

WILLIAM HARRIS SHARPE, ET AL.

MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant in the above-styled case, WILLIAM HARRIS SHARPE, through counsel, and moves this Honorable Court to suppress the evidence in this matter and alleges as follows:

—1—

On or about June 9, 1978, State and Federal agents conducted a search of a vehicle which Defendant SHARPE was operating on a public highway in Horry County, South Carolina.

—2—

After the search of the vehicle, the agents seized certain items which are alleged to constitute evidence in the present matter and which are to be utilized in the trial of the parties hereto.

—3—

Defendant SHARPE is an aggrieved party as contemplated by Rule 41, F.R.Crim.P., and thus has standing to object to the search and seizure.

—4—

The search and the resulting seizure are unlawful, unreasonable and in violation of Defendant's rights under the Fourth Amendment to the Constitution of the United States, in that the search and seizure were conducted with-

out a search warrant and without probable cause and in furtherance of an unlawful arrest made without probable cause and in violation of law.

WHEREFORE, Defendant, WILLIAM HARRIS SHARPE, respectfully prays that this Honorable Court conduct an evidentiary hearing and order suppressed all evidence or testimony derived from such an unlawful search and seizure.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CRIMINAL NO. 78-138

UNITED STATES OF AMERICA

v.

WILLIAM HARRIS SHARPE AND DONALD DAVIS SAVAGE

MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant in the above-styled action, DONALD DAVIS SAVAGE, through counsel, and moves this Honorable Court to suppress the evidence in this matter and alleges as follows:

—1—

On or about June 9, 1978, State and Federal agents conducted a search of a vehicle which Defendant SAVAGE was operating on a public highway in Horry County, South Carolina.

—2—

After the search of the vehicle, the agents seized certain items which are alleged to constitute evidence in the present matter and which are to be utilized in the trial of the parties hereto.

—3—

Defendant SAVAGE is an aggrieved party as contemplated by Rule 41, F.R.Crim.P., and thus has standing to object to the search and seizure.

—4—

The search and the resulting seizure are unlawful, unreasonable and in violation of Defendant's rights under the Fourth Amendment to the Constitution of the United States, in that the search and seizure were conducted with-

out a search warrant and without probable cause and in furtherance of an unlawful arrest made without probable cause and in violation of law.

WHEREFORE, Defendant, DONALD DAVIS SAVAGE, respectfully prays that this Honorable Court conduct an evidentiary hearing and order suppressed all evidence or testimony derived from such an unlawful search and seizure.

Respectfully submitted,

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RELEVANT PORTIONS OF JOINT SUPPRESSION HEARING—TRIAL TRANSCRIPT

Testimony of Luther D. Cooke—July 31, 1979

* * * * *

[16] Q. All right, sir. Mr. Cooke, since you've been with the Drug Enforcement Administration and the predecessor agencies, what portion of your time has been devoted to enforcement of the controlled substances laws of this country?

A. It's been on a full-time basis since 1966; and in the last six years I've spent approximately thirty percent of my time in a supervisory manner and another thirty to fifty percent of the time actually on the street working cases.

Q. All right, sir. Would you tell us as best you can, would you reconstruct the number of drug cases you've made in your career?

A. In my career probably in excess of seven hundred and in the last three years I've worked on major marijuana smuggling cases in [17] excess of one a month for the last three years.

Q. All right, sir. Have these involved primarily boat cases or have they been boat cases and aircraft cases?

A. Starting in 1970 we worked primarily airplane cases for a year or two. Since being in the Charleston area and during a portion of the time I was in Miami, the majority of the cases have been boat cases.

Q. All right, sir. What has been your experience with the transportation once unloaded of marijuana?

MR. TURNER: I object on the grounds that it has no relevancy—

THE COURT: What is your question?

MR. SIMPSON: Your Honor, I asked him what his experience has been relative to the transportation of marijuana once it had been unloaded.

THE COURT: I overrule the objection.

A. My primary work—

MR. SIMPSON: Wait [18] a minute. I'm sorry. You overruled the objection. He objected and you overruled it.

THE COURT: I overruled it.

Q. I'm sorry. Go ahead, Mr. Cooke.

A. My primary work for the last five years has been with some of the ground based units operating in a surveillance capacity on the off load crews and the transportation crews for the large marijuana loads. Primarily these have involved large trucks, four wheeled drive pickup trucks with campers on them and in a few instances automobiles.

Q. All right, sir. Mr. Cooke, I ask you if you were engaged in your official capacity on the evening of June 8th and early morning hours of June the 9th, 1978?

A. Yes, sir, I was.

Q. All right, sir. And did you have occasion to go anywhere?

A. Yes, sir. I traveled from Charleston, South Carolina to Horry County, South Carolina, during the late hours of June the 8th, 1978 and [19] after that on into the Brunswick County area of North Carolina.

Q. Prior to going to Brunswick County area of North Carolina, did you meet with anyone?

A. Yes, sir. I met with a number of law enforcement officers from U.S. Customs Patrol, the State Law Enforcement Division, Horry County Police Department, State Bureau of Investigation agents from North Carolina and a couple of law enforcement agents from North Carolina as well as one of my own D.E.A. agents at Nixon's Crossroad in Horry County.

Q. All right, sir. And without going into any conversation you had with any of those officers, what was the nature of that meeting, Mr. Cooke?

A. The meeting was primarily a briefing with regards to some activity that was occurring in the Horry County, South Carolina and Brunswick County, North Carolina areas.

[35] * * * * *

Q. Mr. Cooke, what was the purpose of your being in the Nixon's Crossroads area and any trip you made from there into North Carolina?

THE COURT: There is nothing wrong with that question.

MR. TURNER: The defense will stipulate he was in there in connection with suspected marijuana activity.

[39] * * * * *

Q. All right, sir. What occurred next?

A. About 6:30 I met a blue Ford pickup truck with a white Shell camper on it which was being driven by Mr. Savage, Donald Davis Savage.

THE COURT: Wait a minute. You met the Ford pickup with a blue camper?

THE WITNESS: No, sir. A blue Ford with a white camper.

THE COURT: And you recognized Mr. Savage?

THE WITNESS: No, sir, [40] I did not, not at that time.

THE COURT: All right, sir.

A. I met the Ford pickup with a white camper on it as I was a little over a mile from the intersection of State Road 1186 and a road coming out of Sunset Beach, North Carolina. The pickup was followed almost immediately by a blue '78 Pontiac Bonneville.

Q. All right, sir. Now, what time of day or night was this or morning, Mr. Cooke?

A. This was approximately 6:30 in the morning when I first met them.

Q. All right, sir. And what were the lighting conditions at that time?

A. It was just starting to get light, if I recall correctly. Headlights were on the vehicles, but it was light enough to be able to ascertain the coloration of the vehicles and to be able to see that there were two white males in the Pontiac and one white male in the Ford pickup.

Q. All right, sir. Were you able to observe anything else about the [41] Ford pickup you described as having a camper body on it?

A. When I passed it, it appeared to be riding very low in the rear. I say passed it, I actually met them. They were headed away from Sunset Beach and I was headed towards Sunset Beach on State Highway 86.

Q. It appeared to be what did you say?

A. Riding very low in the rear. It seemed to be in an overloaded configuration.

Q. Did you notice anything about the windows on the camper?

A. When I first met it, I did not; however, after meeting the truck and the car, I turned around the first available location to be able to make a U-turn and caught back up with the truck and the car at which time I could see the rear window of the camper of the truck. It appeared to be covered with a quilted type of material.

Q. All right, sir. What were you driving at that time? I believe you said your own car earlier, would you describe your car as to any markings or anything it might [42] have had on it, Mr. Cooke?

A. This was a 1975 two-door beige colored Oldsmobile with no particular markings on it at all.

Q. All right, sir. And what did you do after you turned around and caught back up with these vehicles?

A. The first thing that I noticed was the license tag on the Pontiac. The car had a South Carolina license tag on it which was ASC 446, I believe, and it also had a National Car Rental sticker on the rear bumper of the vehicle. The pickup truck also had a South Carolina tag on it. I was in communication with the Highway Patrolman in Conway over the State Highway Patrol radio and asked him to run the tag which I got from the pickup truck I was following. I was following them out road 1186 and eventually it led us out to Highway 17. The tag on the Pontiac I did not run because of the fact that it had the National Car rental sticker on the bumper of it.

[43] * * * * *

Q. You had the Highway Patrol run the tag on the truck, is that correct, sir?

A. Yes, sir, I did.

Q. And what if anything were you able to learn about the truck [44] from that license tag?

A. The vehicle registration came back to a subject by the name of H-U-C-K-S in Conway, South Carolina. And the only information available at that point was the name Willie S. Hucks from Conway on a 1976 Ford pickup.

Q. All right, sir. And what type pickup was it that you observed?

A. It was a 1976 Ford with a camper on it.

Q. All right, sir. Would you continue with what you did after you ran that check?

A. On leaving State Road 1186, we followed a route that led us directly to U.S. 17 in North Carolina by State Roads 1164 and 1165 coming out about ten miles from the first time that I had seen them. We ended up at the North Carolina-South Carolina state line. During this period of time I had come fairly close to both of the vehicles, the Pontiac and the truck, the truck being in the lead all of the time as we went out to Highway 17. I noticed the way the truck was handling itself, the fact that when it went [45] around curves it had absolutely no sway or bounce to it. Whatever bumps or waves that were in the roads, the vehicle still had no bounce at all to it and I continued to follow these two vehicles which ran in tandem all the way from where I initially encountered them down into South Carolina into the Myrtle Beach area.

Q. Approximately what distance was that in miles, Mr. Cooke?

A. From the time I initially encountered them, we drove approximately ten miles to the state line, another ten miles to the Atlantic Beach or North Myrtle Beach, South Carolina area.

Q. All right, sir. And during this period of time you were observing, you say, the way it took bumps and went around curves?

A. Yes, sir, that is correct.

Q. From your past experience what did that indicate to you?

A. The way the vehicle was handling on the bumps and the curves indicated to me it was loaded; that it did have a heavy load in it [46] because there was no bump or bounce or sway at all to the vehicle.

Q. All right, sir. Did you have occasion to contact anyone when you got in the Atlantic Beach area or in that area?

A. Yes, sir. As I approached the Atlantic Beach area, it was before seven o'clock, I passed Don's Pancake House which was right on the side of U.S. 17; and I asked the Highway Patrol dispatcher if he had any units working in

the area because I had seen a Highway Patrol car sitting at Don's Pancake House in Atlantic Beach when we passed. The dispatcher said that they had a unit coming on at seven o'clock at which point I asked him if he would attempt to contact the unit that was at Don's Pancake House with reference to him coming out to give me a hand on a possible stop of the vehicles.

Q. All right, sir. Was anyone with you at that time in your vehicle?

A. No, sir, I was by myself the entire evening or morning.

Q. All right, sir. And after you made this request, what if anything occurred?

[47] A. At this time we had come into a mostly commercial area of businesses. The street had gone from the two lane to a six lane street; and on approaching the traffic signals in the area at several of the lights I actually pulled alongside both the Pontiac and the pickup truck and had a better look at the entire configuration of the pickup. I was able to see it more clearly from both the front, the side and the rear. I noticed that it had a blue bedspread type of material over the side windows and the rear windows, as I mentioned earlier, were covered with quilted material, a white quilted material. I was also able to observe the occupants of both vehicles, the two gentlemen in the Pontiac and one man in the Ford pickup. As a result of my request to the Highway Patrol dispatcher in Conway, Highway Patrolmen Kenneth Thrasher—excuse me Patrolman Thrasher came on the scene, in the area, shortly before seven o'clock and advised me that he would be catching up with me very shortly; that he had seen me pass the area of Don's Pancake [48] House and he did catch up with us in the North Myrtle Beach area approximately twenty-one miles after I had initially encountered the two vehicles in North Carolina.

Q. All right, sir. Mr. Cooke, let's go back for a moment. You said you were able to when you got in the area where there were stoplights to actually pull alongside the pickup, the camper and the other vehicle, is that correct, sir?

A. Yes, sir, that is.

Q. And you say you got a better opportunity to look at the configuration of the pickup?

A. Yes, sir.

Q. All right, sir. What were the lighting conditions by that time, sir?

A. It was full daylight by that time.

Q. All right, sir. You say there was a blue type material over the side windows?

MR. TURNER: Please Your Honor, this is repetitious. He's testified to every bit of this.

[49] THE COURT: That's all right. Go ahead.

A. Yes, sir. It was a blue cloth material, bedspread looking material over the side windows.

Q. All right, sir. How many campers have you previously in your experience as a Drug Enforcement Agent seen a load of marijuana, Mr. Cooke?

A. In the last five years since I've been in the Charleston area, I would say probably in excess of eighty.

Q. All right, sir. And what if anything is common to thoe vehicles?

A. Ordinarily the curtains on a standard camper will be matching curtains set up by a family to use a camping vehicle. Most of the marijuana load vehicles that I have encountered have had mismatched curtains, curtains on sideways, different types of window coverings from front, back and rear; and in this instance the bedspread material was hung not in a vertical position, but in a horizontal position as far as the lines in it were concerned.

Q. All right, sir. What if anything did you notice about the configuration [50] as to weight distribution?

A. The front of the pickup, the wheel well for the front wheels of the pickup appeared to have an excessive amount of space between the top of the tire and the fender itself. In the rear there was very little difference in the top of the tire and the fender itself; and the vehicle appeared to be riding in a very rear end lower and front end higher position.

Q. You say Mr. Thrasher caught up with you?

A. Yes, sir, he did.

Q. What occurred after he caught up with you?

A. After Mr. Thrasher caught up with us, we continued to follow them as I conversed with Mr. Thrasher and attempted to tell him what I had encountered, where I had been. We were headed south on U.S. 17 and had almost made the decision, I had almost made the decision to stop the vehicles had they made a turn off U.S. 17. They turned into the road that was designated by a large sign that indicated Lake Arrowhead Campground; and being somewhat [51] familiar with that area, I knew there were several campgrounds along that particular road. I asked Mr. Thrasher to hold off for just a few minutes so we could ascertain whether or not these vehicles did in fact turn into one of the campgrounds on that road. We followed them and at that point I believe the Pontiac had gone into the lead somewhere in the commercial area. The Pontiac pulled ahead of the pickup truck and when they turned into the area, the campground road, the Pontiac was I believe leading the Ford pickup. The vehicles did not turn into any of the campgrounds located along that particular road; and about three miles later or between two and three miles after we turned off of Highway 17, we actually made a loop and came back to U.S. 17 and again turned south on U.S. 17.

THE COURT: That's everybody, the pickup? I mean the Pontiac, the pickup, you and the Highway Patrolman?

THE WITNESS: Yes, sir.

[52] THE COURT: You made a loop and came back on 17?

THE WITNESS: Yes, sir, we did.

Q. All right, sir. What if anything, Mr. Cooke, do you recall was the speed limit in that campground area?

A. I believe it's thirty-five miles an hour on that campground road.

Q. All right, sir. Do you recall what speed you were traveling at?

A. Most of the time we were running somewhere around fifty to sixty miles an hour.

Q. You made a loop back out to 17, is that corect?

A. Yes, sir, we did.

Q. And all four vehicles proceeded south?

A. Yes, sir. All four vehicles turned south on 17.

Q. All right, sir. What occurred next?

A. At that point I had asked Mr. Thrasher what he thought about the way the truck was riding and whether or not he had cause to stop [53] them himself at that point. He indicated to me he did. As we turned on to 17 I asked Mr. Thrasher if there was any place there that we could safely stop the vehicles, indicating that we needed to get off the road if possible. He told me that there were a couple of parking lots within a short distance from where we had turned back onto Highway 17. At that point I asked him if he would go ahead and stop the vehicles. Again we were back out on a six lane road. We were at that point running in the center of the three right-hand lanes with the Pontiac in front, the pickup truck, my vehicle and then Mr. Thrasher in his Highway Patrol car. I asked him to stop the vehicles, which he attempted to do by pulling into the left lane. He turned on his blue light as he came alongside the Pontiac.

Q. The Pontiac was which vehicle? Was it the truck or Pontiac?

A. The Pontiac was the lead vehicle at that point. Mr. Thrasher pulled alongside the Pontiac, turned on his blue light and motioned them over to the side of the road. The Pontiac started over to the right and as he moved into the right-hand lane, Mr. Thrasher started to move [54] over also and the Ford pickup cut between the two vehicles, between the Highway Patrol car and the Pontiac and proceeded on down the road. Mr. Thrasher told me to get the Pontiac. He told me that he would get the truck.

Q. All right, sir. And did you—what did you do after Mr. Thrasher told you to get the Pontiac?

A. The Pontiac pulled into an independent service station parking lot and I pulled in immediately behind it; set a blue light on the dash of my vehicle; got out; walked over to the Pontiac and identified myself to the driver of the vehicle who was Mr. Sharpe and asked him for any identification or asked him for his identification or driver's license at that point. Mr. Sharpe handed me a driver's license in the

name of Raymond J. Pavlovich. I'm not exactly sure what the pronounciation is, with a Georgia driver's license.

MR. SIMPSON: Your Honor, without objection we offer this.

THE CLERK: Government's Exhibit 1.

(whereupon Govrnment's [55] Exhibit 1 is received and marked in evidence.)

MR. KADISH: Your Honor, we'll be more than happy to stipulate the driver's license was given to the Agent at his request.

* * * * *

Q. What occurred next, Mr. Cooke?

A. At that point after ascertaining the initial identification which was given to me by [56] Mr. Sharpe and there was another subject in the vehicle by the name of Davis, I asked them to stand there outside the automobile while I went back to my own car and attempted to recontact Mr. Thrasher to see whether or not he had in fact been able to stop the pickup truck. For several minutes due to the fact that Mr. Thrasher was out of his car apparently and I had been in and out of mine, we were unable to reestablish contact for a few minutes. And then through the Highway Patrol dispatcher I was able to make contact with Mr. Thrasher. He advised me that he had been able to stop the vehicle at Highway 17 and 62nd Avenue, which was roughly a half a mile from where I had stopped with the Pontiac.

Q. All right, sir. At that time did you seek any assistance from any other police officer?

A. Yes, sir. In conversations with the Highway Patrol dispatcher I had attempted to contact the North Myrtle Beach Police Department and about this time the stop actually occurring sometime between 7:10 and 7:15, about 7:20 or 7:25 a marked unit from the Myrtle Beach Police Department arrived at my location. I asked the two uniformed [57] officers if they would stay with Mr. Sharpe and Mr. Davis while I went up to see where Mr. Thrasher was and to ascertain the circumstances at that location. The officers from Myrtle Beach Police Department did remain at the area there at the service station with the Pontiac and the two

subjects. I proceeded down south on 17 about a half a mile to where Mr. Thrasher had stopped with the blue Ford pickup truck and at that point noted Mr. Thrasher standing between his vehicle and the Ford pickup with Mr. Savage.

Q. All right, sir. When you got there what if anything did you do about identifying yourself?

A. Immediately on arriving at that location I identified myself to Mr. Savage as a D.E.A. Agent and Mr. Thrasher handed me the papers which had been given to him or which he had with reference to the vehicle, the ownership of the truck which he had stopped.

MR. SIMPSON: We offer this.

THE CLERK: Government's Exhibit 2.

(Whereupon Government's [58] Exhibit 2 is received and marked in evidence.)

Q. Mr. Cooke, I hand you what I have stapled together, two plastic envelopes marked as one Exhibit, Government's Exhibit 2, and ask you if those are the papers that Mr. Thrasher handed you?

A. Yes, sir, they are.

Q. They indicated the truck was purchased on what date?

A. They indicate the truck was purchased on June the 8th, 1978 in Myrtle Beach, South Carolina by J. R. Pavlovich, address 5914 Lakeside Drive, Atlanta, Georgia. The signature at the bottom is R. J. Pavlovich.

[59]; * * * * *

Q. Mr. Cooke, did you note anything about the name appearing on the purchase papers for the vehicle that Mr. Thrasher handed you?

A. Yes, sir. The name on the purchase papers are identical with the name on the driver's license, which had been given to me by Mr. Thrasher [sic] when I had asked for his identification back at the Pontiac, when I had stopped with the Pontiac, with the minor exception: I believe the bill of sale there is made out to J. R. Pavlovich and the signature on it is R. J. Pavlovich. The [60] driver's license is in the name of Raymond J. Pavlovich.

Q. After you examined Government's Exhibit No. 2, what did you do next?

A. I asked Mr. Thrasher who Mr. Davis was and at that point Mr. Thrasher produced Mr.—I'm sorry, I asked him who the man was, Mr. Savage, and Mr. Thrasher produced the driver's license which he had retained or which he had in his possession at the time. I explained to Mr. Savage that what I had been doing during the night and I explained to him that I inspected the truck—

THE COURT: Excuse me one minute. I didn't catch what you said about the driver's license. You mentioned about the driver's license. You asked the driver for his driver's license?

THE WITNESS: No, sir. The Highway Patrolman had Mr. Savage's driver's license at that time. I simply looked at the driver's license and returned it to the Highway Patrol.

THE COURT: What [61] name was that?

THE WITNESS: That was Mr. Savage. I believe Mr. Savage had his own Georgia license. I believe that was it at the time.

Q. You say you explained to Mr. Savage what you had been doing, is that correct?

A. Yes, sir. And I explained to him that I thought that particular vehicle, the Ford pickup was probably loaded with marijuana at the time. I asked him for his permission to look into the rear of the vehicle. He explained to me that he was not the owner of the vehicle. I asked him if he knew where the owner was. He said he did not. I told him that I knew where the man by that name was. I asked him again for permission to look into the rear of the truck, which he did not give me. At that point I stepped up to the back of the truck and stepped up on the rear bumper of the truck.

Q. Why did you step on the rear bumper, Mr. Cooke?

A. In order to confirm what I had noticed as we were driving down the thirty mile [62] drive from North Carolina down to Myrtle Beach, the fact that the vehicle did not have any bounce or give to it as it hit the bumps. I weighed close to two hundred pounds. I put my entire weight on the rear bumper of the vehicle and did not notice any apprecia-

ble change in the rear bumper as far as the proximity to the ground was concerned.

Q. All right, sir. After you stood on the bumper what did you do next?

A. Next I got back off the bumper and then leaned down towards the tailgate of the camper, the camper shell itself, leaned up next to the rear window of the camper there on the rear door window combination and took a deep breath, smelled a very strong and distinct odor of marijuana.

Q. All right, sir. What do you base your opinion that was the odor of marijuana, Mr. Cooke?

A. The smell of marijuana that I have encountered probably in excess of two hundred thousand pounds within the last two years, preceding that particular time.

[63] Q. All right, sir. And after you, as you say smelled marijuana, what did you do next?

A. At that point I walked around to the driver's portion of the pickup, took the keys from the ignition, returned to the rear of the camper, opened the camper shell door and inside saw a large number of burlap covered bags, some of which had sand on them, some of which were a little bit damp and noted that they appeared similar to the large number of bales of marijuana that I have encountered over the last number of years.

Q. All right, sir. And what happened next, Mr. Cooke?

A. At that point we—I advised Mr. Savage that he was under arrest and I asked Mr. Thrasher to maintain custody of him while I went back north on 17 to the Pontiac where Mr. Sharpe and Mr. Davis were located. I returned to the Pontiac and at that point advised Mr. Sharpe and Mr. Davis that they were under arrest.

[65] * * * * *

Q. All right, sir. Mr. Cooke, did you supervise the unloading of that truck? Was it done under your supervision?

A. Yes, sir, it was.

Q. What did that truck contain insofar as the number of bales?

A. The truck contained forty-three bales of marijuana weighing a total of two thousand [66] six hundred twenty-nine pounds.

Q. All right, sir. What procedure did you follow relative to any identification of what was on the truck, sir?

A. In our normal procedure with large seizures of marijuana we remove the bales of marijuana from the truck. We took eight bales initially and cut small holes in the bale, took small subsamples from the eight bales, photographing the entire scene, the entire seizure as we went along, including the eight bales with pictures of the small subsamples. We retained two complete bales from which subsamples had also been taken by the eight subsamples. Those subsamples were forwarded to our Southeastern Regional Laboratory in Miami for analysis. The two bales that we retained as evidence were stored in the evidence vault at my office and the remaining bales were destroyed by fire at a local facility here in Charleston.

Q. All right, sir. How were the eight bales that were sampled selected?

A. They were merely pulled out from the forty-three bales that were in the truck. I or the [67] Agent working with me helping unload the truck would say that looks like a bale that we could take a sample out of. So we would take a sample from one of the bales at random, taking a sample out of the truck.

Q. They were taken at random?

A. Yes, sir.

Q. Did all the bales appear similar in the way they were packed?

MR. TURNER: Leading.

MR. SIMPSON: I withdraw the question.

Q. How were they packed?

A. All of the bales in this particular vehicle were very uniform in appearance. They had a highly compressed configuration to them. If you start with the outside, the outside wrapper was a burlap bag which was tied off with hemp twine. Inside that was a clear white plastic bag which had been taped down. Inside the white plastic bag were two Kraft paper bags each of which was tightly wrapped

around a large tube of [68] marijuana. The bales themselves weighed from about forty-nine to fifty-six, fifty-seven pounds each.

Q. All right, sir. I believe you said eight samples were submitted by—to your regional lab in Miami, is that correct?

A. Yes, sir, that's correct.

Q. As case agent, you received back a report on those samples?

MR. TURNER: Your Honor, we will agree those samples were tested and were positive for marijuana.

[70] * * * * *

Q. You first came across the camper at approximately 6:30 A.M. on June 9, is that correct?

A. Yes, sir. 1978.

Q. Is it—strike that. By 6:50 A.M. that morning you had made the decision that you wanted to stop the camper, didn't you, by 6:50 A.M.? You wanted to stop the camper and the car?

A. I had made an initial determination that I would probably want to stop the car and the truck.

Q. Okay. I'd like to call to your attention the preliminary [71] hearing transcript at page ten. First of all do you remember testifying at a preliminary hearing before Magistrate Carr which was held on June 26th, 1978 here in Charleston?

A. Yes, sir, I do.

Q. Do you happen to have a copy of that in front of you?

A. Yes, sir. I've just been handed a copy of it.

Q. Do you remember making at page 10 this statement, lines 11 through 14 "I had just passed a restaurant where I had noted a Highway Patrol car parked and I asked the dispatcher to call the restaurant and ask the man to come on the area and give me a hand because at that point I wanted to stop the two vehicles."

Do you remember giving that answer to the question that was posed to you that day?

Q. You didn't state probably, did you, in that answer?

A. At that time I did not have the exact time of day available to me.

[72] Q. What I'm asking you is this question: at the time you gave that answer you did not use the word probably want to stop the vehicles, did you?

A. That is correct.

Q. You said you wanted to stop the two vehicles?

A. That is correct.

Q. Indeed the purpose for summoning the Conway dispatcher at approximately 6:50 that morning was to get assistance to stop the vehicles, wasn't it?

A. The review of the time indicates it was 7:56. The purpose was to obtain assistance in the stop of the vehicles, yes.

Q. Your testimony now is that the first time you had contact with the Conway dispatcher was at 7:56?

A. I'm sorry. 6:56, approximately.

Q. So when I said 6:50 a moment ago I was off by six minutes, wasn't I?

A. Yes, sir, you were.

Q. So by 6:56, Agent Cooke, you had made the decision to call the [73] dispatcher so that he could get you assistance to stop the vehicles, hadn't you?

A. Basically, yes, sir.

Q. All right. Now at that point your testimony was you had been following the vehicles for some perhaps ten, eleven miles, correct?

A. Twenty miles.

Q. Twenty miles?

A. Yes, sir.

Q. Are you saying that you made the contact with the Conway dispatcher around the City Limits of North Myrtle Beach, is that what you're saying?

A. I was in the vicinity of Atlantic Beach.

Q. What was the distance between the vicinity of Atlantic Beach and the first time you saw the camper, how many miles?

A. Twenty miles.

[75] * * * * *

Q. I show you Defendant's Exhibit 1 and ask you if you can identify it?

A. Yes, sir, this is a report that I wrote.

Q. And that report consists of a transcription of the tape that was made by the Conway dispatcher in the course of his conversations with you on the morning of June 9, 1978, isn't that correct?

A. Yes, sir, that is correct.

Q. And did you personally make that transcription?

A. Yes, sir, I did.

Q. Did you listen [76] to the tape very carefully when you made it?

A. Yes, sir, I did.

Q. Is it accurate and true to the best of your knowledge?

A. To the best of my knowledge it is.

Q. Have you since learned of anything that would cause you to change anything in that transcription that you made?

A. No, sir, there is not.

Q. I notice that on the transcription there is a series of times that are written in the margin. The first is 6:36 A.M. Is that time the correct time?

A. According to the computerized tape run from the Highway Patrol facilities, that would be the correct time.

Q. At 6:53 A.M. there is a reference here to 9/7/3. I take it you are 9/7/3?

A. Yes. On the Highway Patrol frequency. That's my assigned call number.

Q. 9/7/3, do you have any units working in the Myrtle Beach area and he says say again, which area? You say in the [77] Myrtle Beach-North Myrtle Beach area I don't have any working right at the moment, but I have somebody coming on pretty soon at 7 o'clock who ought to be out and in time, do you remember that conference between you and the dispatcher?

A. Yes, sir, I do.

Q. Were you not asking for someone in the Myrtle Beach area because you intended at that time to stop the vehicles in the Myrtle Beach area?

A. No, sir, I did not.

Q. What was the purpose then in asking for the assistance?

A. The purpose for asking for the assistance was I did want to stop the vehicles. As far as stopping them in the Myrtle Beach area, that was not exactly anything I had in mind at the time.

Q. Now, up to that time that you had observed the vehicle for this now you say twenty miles, you had not made any determinations whatsoever that the vehicles were involved in any kind of traffic situation, had you, traffic violation, had you?

A. No, sir, I had not.

* * * * *

[79] Q. At the time you made your U turn, you had no knowledge whatsoever that the Pontiac was a rental car, did you?

A. No, sir, I did not.

Q. At the time you made your U turn you had no knowledge whether or not the people in the car had any affiliation with the people in the truck, did you?

A. No, sir, I did not.

Q. You did not see any signaling between the people in the car and the person in the truck, did you?

A. No, sir, I did not.

Q. You did not see any evidence of radio communication between the people in the truck and the people in the car when you made the U turn, did you?

A. No, sir, I did not.

Q. Indeed for the entire trip, for all I think you said thirty miles of it, you never saw any signaling between the people in the car and the person in the truck, did you?

[80] A. No, sir, I did not.

[83] * * * * *

Q. At the time that you began to converse with Agent 93 or Patrolman Thrasher, all you knew about the camper or pickup camper was that it was registered to a Mr. Hucks in Conway, isn't that true?

A. As far as the registration of the vehicle is concerned, yes, sir.

[85] * * * * *

Q. Did the man drive in any erratic fashion during the time you were following him? What I mean by that is did he take evasive action to try to get away from you?

A. I think I would say evasive in the route off Highway 17 and the three mile run back to Highway 17 as we went down Campground Road, that I would say was evasive, yes, sir.

Q. Other than that one turn and that one short loop, was there anything that was evasive?

A. No, sir.

Q. During the time of the loop did the camper dart off down a side road or anything like that?

A. No, sir, it did not.

Q. Now, during the time of the loop was there any unusual happening or did you observe any communications between the camper and the car?

A. No, sir, I did not.

[89] * * * * *

Q. Now, when the car was pulled over it went into an independent gas station, you said, is that correct?

A. Yes, sir.

Q. Did the occupants do anything to take any evasive action at that time?

A. No, sir.

Q. They didn't jump out of the car and try to run, did they?

A. No, sir.

[99] * * * * *

Q. Now, in any event, you left the men in the custody of the Myrtle Beach police officers and you went up the road to see Agent E-93 and Savage and Thrasher?

A. Yes, sir.

Q. From the transcript that you did, Mr. Cooke, we know that the stop of the car, the stop of the car occurred somewhere around 7:10, is that not correct, give or take a minute or two?

A. Yes, sir, that's correct.

Q. It might have been 7:08, it might have been 7:09 or 7:10 or 7:11, correct?

A. Correct.

Q. During that period of time you overheard the dispatcher trying to reach E-93 to see if he had successfully

pulled the pickup truck over, didn't you? You heard that on the radio, didn't you?

A. Yes, sir, I did.

Q. You yourself [100] tried to reach Thrasher?

A. Yes, sir, I did.

Q. For a while you couldn't get him?

A. That's correct.

Q. And the minutes were ticking away; and would you say it was maybe 7:15 before you reached them, thereabouts, give or take a minute or two?

A. I can check the transcript, if you like.

Q. Go ahead. Okay? What time did you ultimately reach Thrasher by radio?

A. The stop was made sometime between—right at 7:12. My next contact with Mr. Thrasher was sometime around 7:20, 7:21.

Q. So at this time approximately twelve minutes had gone by, correct?

A. Yes, sir.

Q. And these two men are under your control at that time, all during that time, correct?

A. They are there at their automobile with me, yes, sir.

[101] Q. Now, we are at 7:23. Is it not fair to say, as I think you just testified a few moments ago, that at least another ten minutes went by before the Myrtle Beach Police Unit arrived, give or take a minute or two?

A. Ten minutes from when?

Q. From 7:23.

A. No. It was probably more in the neighborhood of five minutes. I don't think it was as long as ten minutes before the marked car unit got there.

Q. That brings us at any rate to fifteen or sixteen minutes of time, does it not?

A. Yes, sir.

Q. Now, that would bring the time up to about 7:28, correct?

A. Yes, sir.

Q. Now, the tape ends at 7:30, does it not?

A. That is correct.

Q. If you will look at the tape which I think you have in front of you, the last things you are talking about [102] there are contacting some people at Mar Vista, are you not?

A. Yes, sir.

Q. And those people at Mar Vista were other D.E.A. agents?

A. There was one D.E.A. agent there; people from Customs; people from State Law Enforcement Division; I don't know who all was there.

Q. Do you know where you were at 7:30? Can you tell from the tape where you were? Answer that first question first.

A. No, sir, I cannot.

Q. You might still have been at the car, correct?

A. According to the tape it's impossible to tell.

Q. You don't have a clear recollection, do you, where you were, whether you were at the car or truck at that time?

A. Yes, sir. By 7:30 I was up by the truck.

Q. Do you think you were riding up to the truck when you made [103] this communication at 7:30?

A. Very possibly, yes.

Q. Assuming you get to the truck around 7:30 or 7:32 and the stop was about 7:10, so now we're about somewhere between twenty and twenty-five minutes have elapsed, hasn't it, somewhere—

A. Approximately twenty minutes.

Q. All right. Now, you're at the truck. When you arrive at the truck is Savage in or out of the vehicle?

A. He's out of the vehicle.

Q. Thrasher has his license?

A. Yes, sir.

Q. You request the registration, do you not?

A. No, sir. Patrolman Thrasher gave it to me.

Q. You requested it from him, didn't you?

A. He handed it to me when I arrived.

[104] * * * * *

Q. Now, you described earlier some conversation you had with Mr. Savage, correct?

A. Yes, sir.

Q. You said that he, in response to your question I know or in response to your statement, I am convinced that there is marijuana in the rear of your truck; [105] can I search it; he said no, didn't he?

A. Yes, sir, he did.

Q. Then you asked him again, you said I'm convinced there is marijuana in your truck; can I search it; again he said no, didn't he? Twice this happened?

A. During the period of the conversation I believe it did happen twice.

Q. You said there was a period of conversations, I know those two things didn't come right after each other, would you say this period of conversation lasted about five minutes where you tried to persuade him to let you look in the truck?

A. The conversation lasted approximately five minutes. I was attempting to get his verbal permission to look at the back end of the truck.

Q. That takes us maybe to thirty or thirty-five minutes of time all tolled since the car was stopped, is that a fair statement, about then? By your own testimony you were adding another five minutes?

A. Twenty-five to thirty minutes.

[112] * * * * *

Q. Was one of the first things you did was to walk up to the rear and take your foot and put it on the bumper and then put both feet on the bumper holding onto [113] the vehicle somehow and trying to move up and down on it?

A. Yes, sir. That is one of the first things I did at the truck.

Q. Prior to this time when you got up on the vehicle and touched it with your feet and shook it, you had not smelled any odor of anything, had you?

A. At that point I had not tried to smell anything, anything close to the vehicle prior to that. Prior I didn't go near it.

Q. You didn't smell anything prior to going up to the vehicle and shaking it?

A. Prior to that, no, sir.

Q. Did you then test the handles to see if they were open or shut?

A. No, sir, I did not, not at that point.

Q. Did you do that after you sniffed?

A. Yes, sir, I did.

Q. And was it locked?

A. Yes, sir, it was.

[114] Q. Would you say that this process took approximately three to four to five minutes?

A. Maybe one.

Q. One minute?

A. One or two.

Q. Walking toward the car getting up with your feet and the rest of it?

A. Yes, sir.

Q. You then announced to Mr. Savage that you wanted to get his keys, did you do that?

A. No, sir, I did not.

Q. You went right to the keys, took it out of the ignition and opened the latch, did you not?

A. I believe I told Mr. Savage that that is what I was going to do.

Q. At that time, two times he had told you not to enter his vehicle, didn't he?

A. Prior to that time, yes, sir.

[115] * * * * *

THE COURT: Let me stop you. Maybe I was reading something and missed a part of it. I don't think so. You stepped on the bumper. You didn't smell anything. You said at the time you hadn't smelled any odor of anything at the time you put your foot on the bumper?

THE WITNESS: No, sir. At that time I just walked straight up to the truck.

THE COURT: Then what did you do when you put your foot on the bumper?

THE WITNESS: That took approximately five to ten seconds. I got up off the bumper, put my nose to the back end of the camper and took a deep breath and smelled the marijuana inside the truck at that time.

THE COURT: Then you went [116] and asked for the keys?

THE WITNESS: I did not ask for the keys. I possibly asked Mr. Thrasher for the keys and he indicated they were in the ignition. I honestly do not remember that sequence; however, I did get the keys from the ignition of the truck, went around and opened the rear end of it myself.

THE COURT: All right, sir. Thank you.

Q. Now, you opened the door, you saw bales?

A. Yes, sir.

Q. Just like they're depicted in the pictures that have been offered by the Government, true?

A. Yes, sir.

Q. No bales were punctured, were they?

A. No, sir, not at that point.

Q. There was no residue on the floor of that vehicle when you took the bales out later that day, was it?

A. That's correct.

Q. You opened the [117] door, you saw the bales, you saw no residue, you saw no puncture, you saw nothing but bales, you turned to Savage and said you're under arrest, right?

A. Basically, yes.

Q. What for?

A. Possession of marijuana with intent to distribute.

Q. Had you seen marijuana?

A. I had seen approximately forty-three bales in a configuration that was similar to the numerous hundreds of thousands of bales or pounds that I have seen in the last several years, smelled the distinct odor of marijuana at that point and placed him under arrest at that point for possession of marijuana with intent to distribute. I had not physically looked inside the bales themselves at that point.

Q. The question gets a simple answer. You didn't see any marijuana at the time of the arrest, did you?

A. I had not seen it at that time, no, sir.

[119] * * * * *

Q. At this point you were interested in getting back to the scene where the car was with the Myrtle Beach units, weren't you?

A. That is correct.

Q. So all of this that you have just described, going to get the key out of the ignition, the opening of the car, telling Savage he was under arrest, leaving [120] instructions with Thrasher and so forth, would you say that consumed at least five or six minutes, that whole thing, from the moment you started doing that?

A. The moment I arrived to the moment I left I spent less than ten minutes.

Q. That would bring us up to maybe a total now of thirty-five to forty minutes, in that vicinity?

A. Somewhere between thirty and forty minutes.

Q. How long did it take you to drive back to the car, another minute or two?

A. Thirty seconds.

Q. When you got back to the car, you advised them that they were under arrest, correct?

A. Yes, sir, that is correct.

Q. For what?

A. Conspiracy to possess and distribute marijuana.

[125] * * * * *

Q. I see. Now, at the time you made the decision to stop the vehicles—which decision you testified to earlier today, your decision to stop was based on a profile situation as you described it at the preliminary hearing, wasn't it? I believe one of the Defense Counsels described it that way?

A. Yes. I believe one of the Defense Counsel described it as a profile search for me at that time.

Q. You agreed to it, didn't you?

A. I agreed to it, yes.

Testimony of Kenneth Calhoun Thrasher—July 31, 1979

[137] * * * * *

Q. All right, sir. What primarily on June the 9th, 1978, were your duties and where were you stationed?

A. I was stationed in Horry County. I was assigned to work the Myrtle Beach area that day shift.

Q. And primarily what do your duties entail as a member of the Highway Patrol in the Myrtle Beach area?

A. Patrolling the highways, investigating accidents.

* * * * *

[138] Q. All right, sir. When you contacted Mr. Cooke, what if anything did he advise you?

A. He stated that he had been behind a car and a pickup with a camper on it since—up in North Carolina and that he was interested in the truck and believed that the car was traveling with the truck.

Q. All right, sir. And did he advise you what his location was at the time you went on the area?

A. He did. He was several miles south of me, about two or three miles.

Q. Did he advise you what Highway he was on?

A. He did. He was on Highway 17.

Q. What if anything did he ask you to do?

[139] A. They had told me on the telephone to catch up with him whenever I got in the car.

Q. Okay. Did you in fact catch up with him?

A. Yes, I did.

Q. All right, sir. If you would, describe for the Court the situation on Highway 17 when you caught up with Mr. Cooke; where were the various vehicles that were involved in this litigation?

A. There was a Pontiac and a camper and Mr. Cooke's car in one line headed south on 17 just outside of the North Myrtle Beach city limits.

Q. Which was the lead vehicle?

A. The blue Pontiac.

Q. All right, sir. And where was the camper?

A. Right behind it.

Q. And how close a proximity was it?

A. A car length or two. He was right close behind it.

Q. Where was Mr. Cooke?

[140] A. Right behind the pickup truck.

Q. How close was he to the pickup, would you say?

A. A couple of car lengths.

Q. Was there much other traffic on the Highway that morning?

A. Not a whole lot. It was not too heavy because I had exceeded the speed limit a good bit catching up with him.

Q. All right. After you caught up and found this convoy, for want of a better word, what did you do?

A. I dropped in behind them, dropped behind Mr. Cooke and we followed them down the Highway.

Q. All right, sir. During this period of time were you in radio contact with Mr. Cooke?

A. I was.

Q. All right, sir. And what if anything did you discuss with Mr. Cooke as you were proceeding south on 17?

A. He asked me if I thought the truck might be overloaded, if it was setting funny. It did look like it had quite a load on it.

[141] Q. Okay. And did he ask you anything else?

A. I asked him if he wanted me to try to stop it then and he said to wait a little while.

Q. Okay. Now, as you were proceeding south on 17, did all the vehicles continue on 17 south?

A. No, sir. We turned off on the Lake Arrowhead Road.

Q. All right. For the record and the Court describe the Lake Arrowhead Road?

A. It makes a loop sort of parallel to 17. It's about two miles or so, then turns back to the right and it comes back out on Highway 17 about a mile from where they turned off of Highway 17.

Q. All right, sir. How long after you had fallen into the convoy did this exit of Highway 17 take place?

A. About one minute because it's right at a mile after I caught up with them where they turned off.

Q. All right, sir. [142] And what if anything happened after they turned off?

A. The speed limit on that particular road was thirty-five due to several campgrounds and trailer parks through there and they continued to run along there at fifty-five up to sixty miles an hour.

Q. All right, sir. And where were you and Mr. Cooke during this period of time?

A. Right behind them.

Q. All right, sir. Were there any other cars mixed into the convoy, so to speak, as you went down the Lake Arrowhead Road?

A. No, sir.

Q. It was still the Pontiac, the truck, Mr. Cooke and yourself?

A. Yes, sir.

Q. All right, sir. And what happened after they made the loop through the camp or the Lake Arrowhead Road?

A. They pulled up to the traffic light back on Highway 17 and made a left turn and continued south on Highway 17.

[143] Q. All right, sir. At any time did either vehicle stop at any of the campgrounds or inquire of any camping facilities in the area?

A. No, sir.

Q. At any time did any of the vehicles slow down going through the Lake Arrowhead Road?

A. They had to stop at a stop sign at one of the campgrounds to make the right turn to get back to 17.

Q. All right, sir. Other than that were there any other stops?

A. No, sir.

Q. All right, sir. What happened after you got back to 17?

A. They continued south and started into the city limits of Myrtle Beach.

Q. When you say they, you're referring to what?

A. The four of us, the Pontiac, pickup truck, Mr. Cooke and myself.

Q. Are we still in the same line?

A. Yes, sir.

[144] Q. Same positions?

A. Yes, sir.

Q. All right, sir. After we're back on 17 now and we're headed south again, what next occurred?

A. We got in Myrtle Beach and told Mr. Cooke there was some parking lots on the Highways a little ways and he said to try to stop both vehicles together to get them in the parking lot. So as we approached around 65th Avenue or so, I pulled out and passed everybody and motioned—turned the light on, motioned for the Pontiac to pull over which it did and tried to get the pickup truck stopped, too, but he continued south.

Q. At the time you pulled out and put your blue light on, what positions were the vehicles in?

A. The Pontiac, pickup truck and Mr. Cooke.

Q. What position was your vehicle in at the time you put your blue light on in relationship to the Pontiac and the blue truck?

A. I was alongside the Pontiac.

[145] Q. All right, sir. And where was the blue truck?

A. Behind the Pontiac.

Q. And how did you affect the stopping of the Pontiac?

A. I pulled alongside of him, turned the blue light on. I believe I blew the siren and motioned for him to pull over.

Q. Did he pull over?

A. He did.

Q. Now, what did the blue truck do?

A. He continued south almost hitting my car and Mr. Cooke said he would stay with the Pontiac. So I went on and stopped the truck a few blocks south.

Q. All right, sir. And how did you perfect the stopping of the truck on south Highway 17?

A. I believe I pulled up—finally got up alongside of him and still had the blue light on and motioned him over. He pulled over on Calhoun Drive and 17.

Q. All right, sir.

[146] MR. TURNER: I'm sorry. I couldn't hear.

THE COURT: Calhoun Drive and 17 he pulled over.

MR. TURNER: Thank you.

Q. After you stopped, after you stopped the pickup what did you do?

A. I stepped out of the car with my revolver drawn and the subject turned out to be Mr. Savage stepping out of the truck. And I asked him to put his hands up and I searched him. I holstered my revolver.

THE COURT: You searched him and what?

THE WITNESS: Searched him and holstered my revolver.

Q. All right, sir. What if any identification did you request?

A. I requested the driver's license and the vehicle registration or papers for the truck.

Q. All right, sir. And what if any driver's license and registration papers were produced?

A. He presented a Florida driver's license [147] and bill of sale from Coastal Motor Company dated the day before.

Q. All right, sir. Do you recall what name that was in?

A. The driver's license was in Savage and the bill of sale was in Tablovich, however it's pronounced.

Q. After he produced the driver's license and bill of sale, what next happened?

A. I questioned him about the bill of sale, who did the truck belong to, because the bill of sale was made out to Atlanta, Georgia, an Atlanta, Georgia address. It had South Carolina tags on the vehicle and he was from Fort Lauderdale or Fort Myers, Florida, somewhere in Florida.

Q. Okay. And what if anything did he tell you?

A. He said the truck belonged to a friend and the shocks on it were broken and he was taking it to get it fixed.

Q. And where was Mr. Cooke at this time?

A. He was back up the Highway with the [148] other vehicle.

Q. All right, sir. After Mr. Savage told you that the truck belonged to a friend and the shocks needed fixing, did you have any further conversation with him?

A. I told him that he had been speeding back through the campgrounds, which he denied. He said I hadn't been behind him.

MR. KADISH: I'm sorry.

THE COURT: Talk a little louder. You told him what?

THE WITNESS: I told him he had been speeding through the campgrounds. He denied that and said that I had not been behind him but just a little while.

Q. He said you hadn't been behind him as he was going through the campgrounds?

A. Yes.

Q. What else?

A. I told him Mr. Cooke was back at the other car and he would be down to where we were in just a few minutes.

Q. Did you tell [149] him who Mr. Cooke was?

A. Yes.

Q. What did you tell him?

A. I told him he was with the Drug Enforcement Agency.

Q. After you advised Mr. Savage that Mr. Cooke would be there in a minute and that he was with the Drug Enforcement Administration, what if anything next happened?

A. He got a little nervous and wanted to leave.

MR. TURNER: May it please the Court, I object. That's a conclusion.

THE COURT: I think you can testify if somebody is nervous. The Witness may do that.

MR. TURNER: My objection was to his saying he got nervous and wanted to leave. I think that conclusion is beyond the observer's conclusion.

THE COURT: What indicated he wanted to leave? Did he say something?

THE WITNESS: He said [150] he wanted his driver's license back, that he wanted to go.

Q. After he said he wanted to have his driver's license back because he wanted to go, then what next happened?

A. I told him he couldn't right then.

Q. What else did you tell him or after telling him that what did he tell you?

A. I don't remember. It was just a couple more minutes till Mr. Cooke got down there.

Q. All right, sir.

A. I did ask him what was in the truck.

Q. Okay.

A. And he said that it was empty.

Q. Did you have any further conversations with Mr. Savage about his wanting to leave?

A. I don't believe so.

Q. At any time during your conversations with Mr. Savage was any money mentioned?

A. Not at that time.

Q. All right, sir.

A. There was later.

[151] Q. Okay. Had Mr. Cooke arrived at that time?

A. Yes, sir.

Q. Okay. So after you had refused to give him his driver's license back, then you had some idle conversation, then Mr. Cooke arrived, is that the sequence of events?

A. Yes.

Q. What happened after Mr. Cooke arrived?

A. He asked Mr. Savage if he could look in the back of the truck. He told him, no, that it was empty. Mr. Cooke stepped up on the steps bumper. It had the big bumper on the back of the camper and he told him the shocks were broken and he jumped up on the bumper and the truck just sat there. It didn't move. And he asked him again if he could look inside and he told him no. And Mr. Cooke smelled around the windows of the camper and then he took the keys from the ignition and opened the back window, the back gate of the camper and there were some bales stacked up inside hid behind some quilts over the windows.

[152] Q. All right, sir. What happened after—where was Mr. Savage at this time?

A. He was standing back of the truck next to me.

Q. Okay. And the other individual had been driving the other two individuals that were in the Pontiac? Where were they?

A. They were back up where they were stopped at.

Q. Was anyone with them?

A. The Myrtle Beach Police Department, I believe.

Q. All right, sir. What happened next after Mr. Cooke had opened the truck?

A. He had looked at the papers to the truck to see who it belonged to. And then after he opened the truck and found the bales, he placed Mr. Savage under arrest.

Q. All right, sir. When you say he looked at the papers, what papers are you referring to?

[153] A. The bill of sale from the Ford Company.

Q. All right, sir. And this was the document that you testified Mr. Savage produced for you when you requested the driver's license and identification?

A. Yes, sir.

Q. All right, sir. After Mr. Cooke was shown the bill of sale, what happened next?

A. After he had placed Mr. Savage under arrest, handcuffed him and placed him in my car and Mr. Cooke went back up to where the Pontiac was at.

Q. Okay.

A. And Mr. Savage and myself sat in the patrol car waiting for everybody to get back down there and I told him not to let anybody mess with the truck.

Q. Okay. And how long a wait was it between the time Mr. Cooke left you with Mr. Savage and he ultimately returned with the other individuals?

A. Probably about ten, fifteen minutes.

Q. Okay. Did anything happen while you were seated there in the [154] car?

A. Mr. Savage and myself were talking and then he wanted to talk with me. He said off the record. I asked him what about and he said about letting him go.

Q. Okay.

A. And he told me to take the handcuffs off and let him hit the beach and run, that the owner of the truck would send me thirty thousand dollars through the mail. All I would have to do is check my mailbox.

[161] * * * * *

Q. You pulled this blue pickup truck over and you got out with your gun out, is that right?

[162] A. Yes.

Q. And you ordered the driver to get out of the car, out of his truck, isn't that so?

A. Yes.

Q. Did you spreadeagle him against the side of the truck to search him?

A. I believe I did.

Q. You asked him to take this position, didn't you, with his hands and feet spread, leaning against the side of the truck?

A. Yes, sir, I think so.

Q. Then you patted him down?

A. Yes.

Q. Nobody had said to you that that man might be armed, had they?

A. No, sir.

Q. Nobody indicated to you he might be armed, had they?

A. No, sir.

Q. You don't [163] ordinarily pull your gun on people when you're stopping them, when you're working traffic, do you?

A. Occasionally.

Q. When you have reason to think they might be armed?

A. You never know.

Q. Why is it that sometimes you do and sometimes you don't?

A. Circumstances surrounding the stop.

Q. If you think they might be armed you pull them out with your gun out?

A. Yes.

Q. But ordinarily you don't do that, isn't that so?

A. That's so.

Q. You made him give you his driver's license and the bill of sale for the truck, is that right?

A. Yes.

Q. Where was the bill of sale for the truck?

A. I believe it was in the truck.

Q. He had to go [164] get that out of the glove box, didn't he?

A. Yes.

Q. Did you get it or did he?

A. I don't remember.

Q. Your job was to hold him there until Cooke had finished with the Pontiac and got down there where you were, right?

A. Yes.

Q. In fact that's what you told him you said, the D.E.A. man back there with the Pontiac, he's going to be here in a minute and I have to hold you until he gets here, is that what you told him?

A. Yes.

Q. Isn't that right?

A. Probably did.

Q. And after a while he began to ask you if he could leave, isn't that so?

A. Yes.

Q. And that's when you told him that you also had a couple of [165] traffic charges you could hold him on if you had to, didn't you?

A. Yes.

Q. You had his driver's license, isn't that so?

A. I did.

Q. He asked for it back and you put it in your pocket, isn't that so?

A. Yes, sir.

Q. He was not free to leave, was he?

A. No, sir.

Q. He was not under arrest, was he?

A. He was under custodial arrest.

Q. He was in your custody, but you hadn't charged him with anything?

A. Yes. I had not charged him, that's correct.

Q. So your primary reason for pulling Mr. Savage over was because you were asked to help Mr. Luther Cooke, isn't that right?

[166] A. Yes, sir.

Q. You were there helping him out with the traffic thing and it was a way to keep him there if you had to?

A. Yes.

[172] * * * * *

Q. Okay. Let's go back to the time, I want you to go back and focus in your mind, you're there at the side of the road; you have Mr. Savage in custodial, whatever that is, and Mr. Cooke has not yet arrived yet; are you with me in point of time? You told Savage you're holding him for Cooke and that if he tries to leave you will arrest him on some traffic charges, is that right?

A. Yes.

* * * * *

Decision of The District Court On Motions To Suppress

[221] * * * * *

THE COURT: I don't think under the facts of this particular situation the time element was so great that it vio-

lated the Dunaway (phonetic spelling) or Brown or Terry [222] standard. I think as of this time the Government has proved by the greater weight of the evidence that the stop was based on reasonable and articulable factors, if that's the word; and in view of the cases that we've discussed, I think the time they were held pending the examination of the pickup was not unreasonable under the facts of this particular case as limited as was necessary and I think the search based on the manner in which he smelled the marijuana created a probable cause and once he had probable cause, then they have the right to go into the truck and to hold the Defendants; so I'm going to overrule your motion at this time.

Decision of District Court On Renewal Of Motion To Suppress—August 1, 1979

[151] * * * * *

THE COURT: I think in Conway (phonetic spelling) against New York at page 9 Justice White, and it's a concurring opinion, says there is nothing in the constitution which prevents a policeman from addressing questions to anyone in the streets. Absent special circumstances, the person approached [152] may not be detained or tricked, but may refuse to cooperate and go on his way. However, given the proper circumstances such as those in this case, it seems to me a person may be briefly detained against his will while pertinent questions are directed to him. And that is let me see your driver's license and registration. Of course, a person stopped is not obliged to answer. Answers may not be complied with and failure to answer doesn't have a basis of the rest but it alerts the officer for continued observation. I think under Terry and under the law generally, assuming the stop was proper, that he had the right to ask for identification and for the evidence of ownership of the vehicle, I think that's a minimum intrusion in lieu of the ownership card, of a registration card. He gave him the bill of sale which was all he had. I don't find anything constitutionally impermissible about that, nor do I find anything constitutionally impermissible about getting the driver's license from Mr. Sharpe, Pavlovich (phonetic

spelling) or whatever driver's license they had. I don't think either of those acts constitutes anything impermissible. While there have been a lot of [153] novel questions in this case without a doubt, maybe it shouldn't give me concern, maybe the Government has failed completely to make out its burden or maybe they've made it out without any question and possibly I've considered it a close question, but I don't mind and I don't find, and the Fourth Circuit may reverse this on ten grounds, but I'm not, let's say, uncomfortable. That's not a good word. I'm always concerned when I have somebody's rights involved, so I wouldn't say I'm unconcerned, but the one problem that seems to envelope all of the others and shadow all of the others with me is the question of the stopping in the beginning. I think that's a real close question in the case. Anyway, the way I look at it, I've given it quite a bit of thought. There is certainly no one of the factors upon which the agent relied that would warrant stopping the vehicle; but as I look upon it all, I believe that putting all of the factors that Agent Cooke had in one hand and lumping them together, that the Government has made a case by the greater weight of the evidence to sustain the burden; and for the reasons that I've gone over with you [154] yesterday, there is no use for me to repeat them again, nothing that has occurred since yesterday on that issue has changed my mind or has caused me to change my mind.

Supreme Court of the United States

No. 83-529

UNITED STATES, PETITIONER

v.

WILLIAM HARRIS SHARPE AND DONALD DAVIS SAVAGE

ORDER ALLOWING CERTIORARI. Filed *June 18, 1984.*

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.